IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

Crl.L.P..No. 549 of 2006()

CC.1492/2003 of JUDL. MAGI. OF FIRST CLASS-III, KOTTAYAM

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: PETITIONER/COMPLAINANT

A.R.GOPAKUMAR @ BIJU,
S/O.RAMAKURUP, ACHARIPARAMBIL HOUSE,
AMAYANNOOR KARA, AYARKUNNAM VILLAGE,
KOTTAYAM TALUK.

BY ADV. SRI.K.G.RENGANATH

RESPONDENTS: ACCUSED AND STATE

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1. SAJIMON, S/O.PRABHAKARAN NAIR,
KIZHAKKE PUTHEN PURA, THALAYOLAPARAMBU VILLAGE,
VAIKOM TALUK.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI P.RAVINDRA BABU

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL. L.P.No. 549 of 2006

DT. MARCH 30, 2007

ORDER

This is a petition for special leave to appeal against the judgment in C.C.No.1492/2003 on the file of the Judicial Magistrate of First Class Court-III, Kottayam. The specific case alleged in the complaint was that the appellant/complainant had given an amount of Rs.1,65,000/- to the 1st respondent on 15.10.2003 as a loan and for the discharge of the said amount the 1st respond4ent had issued Ext.P1 cheque. But when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of funds with the account of the 1st respondent. On getting intimation from the bank regarding the dishonour of the cheque, the appellant/complainant had issued a lawyer's notice to the 1st respondent requesting to pay the amount covered by the cheque. But as the amount was not paid, the complaint has been filed before the court alleging that the respondent committed an offence under sec.138 of the Negotiable Instruments Act. To prove the case against the respondent, the complainant himself was examined as PW.1 and another witness was also examined. The complainant also produced Exts.P1 to P7. After closing the evidence of the complainant, the respondent was questioned under sec.313 of the Code of Criminal Procedure. Denying the allegations in the complaint the respondent had stated that he had no transaction with the appellant as alleged in the complaint and he had not received any amount as stated in the complaint from the appellant also and at the same time the respondent had

stated that the cheque in question was issued by him in connection with a loan transaction between the appellant and the brother-in-law of the accused and now the same cheque was misused by the appellant to file the complaint against the respondent. To prove this case, the respondent was examined as DW.4 and he also examined three other witnesses. The respondent also produced Exts.D1 and D2. After considering the entire evidence adduced before the court, the trial court found that the appellant/complainant failed to establish the transaction between the appellant and the 1st respondent and failed to prove that the cheque in question was issued in discharge of any legally enforceable debt against the 1st respondent. The trial court also f that the evidence adduced and the case set up by the respondent, the presumption available to the appellant under secs.118 and 139 of the Negotiable Instruments Act have been rebutted properly and had established that the case set up by the respondent is more probable than that of the case set up in the complaint. Hence the trial court acquitted the respondent. Against the acquittal this special leave petition is filed.

2. This court heard the counsel appearing for the petitioner and perused the records made available to this court. This court also had gone through the deposition of the appellant/complainant and found that the finding entered by the trial court are on evidence and the finding requires no interference by this court. Accordingly this special leave petition stands dismissed.

K.THANKAPPAN, JUDGE.